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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1947.

No. 233

RICE BROS., a partnership consisting of Charles R. Rice, Wm. J. Downey and John J. Donohue,
Petitioner,

vs.

E. H. BIRMINGHAM,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA.

PETITIONER'S REPLY TO RESPONDENT'S BRIEF.

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Respondent's contention that the provisions of Section 308 of the Act, Section 209 of 7 U.S.C.A., continued the liability of market agencies as national public utilities for conversion of stolen or mortgaged property the same as it existed before the enactment of the Act in question when they operated as private agencies.

This section of the Act in the first place only pertains to the liability of a market agency for violating the terms and conditions of the Act by giving the Secretary of Agriculture jurisdiction to hear complaints and award damages or by giving an injured party the right to sue in the United States District Court, and then provides that this section should not abridge or alter the remedies then existing at

the common law or by any statute, but that such remedies should be in addition thereto.

Before the Act was enacted, anyone damaged by the unlawful acts of a livestock commission merchant could sue at the common law and could sue in conversion if such plaintiff's property rights had been violated in a manner which would impose liability upon such commission merchant.

That right still exists today. It is not the contention of the petitioner that the Act has abrogated or destroyed that right. However, the plaintiff in such an action can only recover when the acts of a market agency have been such as would impose liability upon the market agency.

Petitioner concedes that if at the time it rendered its services petitioner had knowledge of plaintiff's alleged and claimed rights and acted in defiance of such rights, then it would be liable for conversion in this case. However, it is conceded that petitioner had no such knowledge and acted honestly and in good faith. Therefore, clearly the right of any person to maintain a suit for conversion against a market agency where the facts are such as to impose liability on the market agency, still exists.

What petitioner contends is that it, having been converted from a private agency into a national public utility compelled to promptly render its services without discrimination to all comers the same as a common carrier, was automatically granted an immunity from liability for conversion unless at the time it rendered its services it had knowledge of the rights of the injured person and acted in defiance of such rights. This clearly presents a question of a claimed immunity or exemption under the Federal Act in question. Petitioner further claims an immunity or exemption on account of the exclusive exercise and control of the industry by the Federal Government.

This clause in the Act in question is exactly the same as contained in Section 22 of the Interstate Commerce Act. Still, it is conceded that common carriers, by reason of the compusory nature of their services, cannot be held liable in conversion for transporting stolen or mortgaged property unless, at the time they are rendering their services, they have knowledge that such property is stolen or mortgaged.

It is settled law that the only rights and remedies preserved by this provision are those which are not inconsistent with the rights and remedies created by the statute.

Texas Pacific R.R. Co. v. *Abilene Cotton Oil Co.*, 204 U. S. 426; 51 Law Ed. 553;
Robinson v. *Baltimore & Ohio R.R. Co.*, 222 U. S. 506; 56 Law Ed. 288;
Keogh v. *Chicago & North Western Ry Co.*, 260 U. S. 156; 67 Law Ed. 183.

In the case of *Pennsylvania R.R. Co.* v. *Puritan Coal Mining Co.*, 237 U. S. 121, 59 Law Ed 867, this Court, in speaking upon this same provision contained in the Interstate Commerce Act, on page 129 of 237 U. S. and on page 872 of 59 Law Ed., said:

> *"That proviso was added at the end of the statute, not to nullify other parts of the act, or to defeat rights or remedies given by preceding sections, but to preserve all existing rights which were not inconsistent with those created by the statute."* (Emphasis supplied.)

As the Packers & Stockyards Act converted petitioner into a federal public utility and imposed upon petitioner all the burdens, duties, responsibilities, and liabilities of a public utility, it necessarily follows that the Act in question granted to petitioner all the privileges, benefits, and

immunities granted to such public utilities on account of the compulsory nature of their services, as the same have been determined by many decisions of the courts.

Respondent's statement that there are no Federal questions presented, when considered in the light of the real questions involved, becomes a mere assertion without force.

Wherefore petitioner submits that the writ of certiorari should be allowed as prayed for and the case reviewed by this Court on its merits, and the judgment of the Supreme Court of Iowa reversed.

Respectfully submitted,

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